



Reply To
Attn Of: HW-113

October 17, 1990

Bill Harris
Washington Department of Ecology
Site Cleanup Section
Toxics Cleanup Program
PV-11
Olympia, WA 98504-8711

Subject: South Tacoma Field Superfund Site

Dear Mr. Harris:

Enclosed for your information are three copies of the recently executed Administrative Order on Consent (absent the RI/FS work plan) for the RI/FS at the above-referenced site. The final RI/FS work plan was transmitted to you earlier.

Please call me if there are any questions (442-6519).
Thanks for your help.

Sincerely,

LC/CP

Christine Psyk
Site Manager

Enclosure

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6 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
7 REGION 10
8

9 IN THE MATTER OF:)

10 SOUTH TACOMA FIELD SITE)
Pierce County, Washington)

11 Burlington Northern Railroad,)
Seattle, Washington;)
12 Pioneer Builders)
Supply, Tacoma, Washington;)
13 Glacier Park Co., Seattle,)
Washington; and the City of)
14 Tacoma, Washington,)

15 Respondents.)

16 Proceeding Under §§ 104 and)
122(d)(3) of the Comprehensive)
17 Environmental Response,)
Compensation, and Liability)
18 Act, as amended, 42 U.S.C.)
§§ 9604 and 9622(d)(3).)
19

U.S. EPA Docket No.
1090-09-03-104/122

20
21 ADMINISTRATIVE ORDER ON CONSENT
22 FOR REMEDIAL INVESTIGATION/FEASIBILITY STUDY
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I. INTRODUCTION

1. This Administrative Order on Consent ("Consent Order") is entered into voluntarily by the United States Environmental Protection Agency ("EPA"), and Burlington Northern Railroad, Pioneer Builders Supply, Glacier Park Company, and the City of Tacoma ("Respondents"). This Consent Order concerns the preparation for, performance of, and oversight costs for a remedial investigation and feasibility study ("RI/FS") for the South Tacoma Field site located in the City of Tacoma ("site").

2. The site is identified on the map attached to this Consent Order as Appendix 1, and is largely bounded to the south by South 56th Street, to the north by South 35th Street, to the east by Union Avenue and the Burlington Northern Right-of-Way, and to the west by Tyler Street, Manitou Way and the top of the bluff. The site boundaries are presently based upon preliminary data and may later require adjustment to reflect additional information about the site. This consent order to conduct an RI/FS is limited to the boundaries as presently defined and to any areas where contamination has migrated from the site. "Site" is defined herein for the purposes of this Consent Order as facility is defined at section 101(9) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. § 9601(9).

3. EPA has identified Amsted Industries, Inc.; Atlas Foundry; General Plastics, Inc.; and TIP Management, Inc. as potentially liable under Section 107(a) of CERCLA, 42 U.S.C. §9607. These organizations received notice from EPA pursuant to Section 122(e) of CERCLA, 42 U.S.C. §9622(e), of an opportunity to negotiate a consent order for the recovery of costs incurred and the performance of a RI/FS, but are not parties to this Agreement. In the event that Potentially Responsible Parties other than those already noticed are identified, EPA will consider issuing Remedial Investigation/Feasibility Study ("RI/FS") special notice letters to them.

II. JURISDICTION

4. The parties consent to this Order to further the public interest by expediting investigation at the site and the determination of feasible and appropriate remedial measures.

5. EPA issues this Consent Order pursuant to the authority vested in the President of the United States by sections 104 and 122(d)(3) of the Comprehensive, Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9604, 9622(d)(3). EPA finds that this authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2926 (January 29, 1987), and further delegated to Regional Administrators, September 13, 1987 by EPA Delegation No. 14-14-C. This authority has been redelegated by the Regional Administrator to the Director of the Hazardous Waste Division by Redelegation Order.

6. By signature hereto, the Respondents herein agree, solely for purposes of this Consent Order and the RI/FS agreed to herein, (1) to undertake all actions required by the terms and conditions of this Consent Order, (2) not to contest the jurisdictional basis for issuance of this Consent Order by EPA, and (3) not to contest the legal basis for EPA's conclusion that an RI/FS is required. This Order is entered and agreed to without adjudication of any issues of fact or law, and without this Consent Order constituting evidence against or an admission by Respondents with respect to any issue of law or fact.

1 III. EPA FINDINGS OF FACT AND CONCLUSIONS OF LAW

2 7. Based on the information available to it, EPA
3 makes the following non-adjudicative Findings of Fact and
4 Conclusions of Law, set forth in paragraphs 8 through 23 herein,
5 solely as the administrative basis of issuance of this
6 administrative order. The findings and conclusions set forth in
7 paragraphs 8 through 23 are made by EPA only, without any consent
8 or agreement of the Respondents.

9 8. The South Tacoma Field site encompasses
10 approximately 300 acres in the southwest corner of the city of
11 Tacoma, Pierce County. The site is part of the Commencement
12 Bay-South Tacoma Channel site which was placed on the National
13 Priorities List pursuant to section 105 of CERCLA on
14 September 8, 1983, 48 Fed. Reg. No. 175.

15 9. The site is in an industrial district and is
16 bordered by residential dwellings. Portions of the eastern half
17 of the site were, at times past, used for rail car construction
18 and repair. Most of the southwestern portion of the site has
19 been filled with dirt and debris. In the north central part of
20 the site, an airport operated intermittently between 1936 and
21 1973. The City of Tacoma Public Utilities Light and Water
22 Division operations have been located at the northern edge of the
23 site since the 1950's.

24 10. The site property owners now include Glacier Park
25 Co., the City of Tacoma, General Plastics, Amsted Industries,
26 Inc., TIP Management, Inc., and Pioneer Builders Supply. A
27 portion of the property was previously owned by Burlington.

1 Northern Railroad. The Amsted and TIP properties comprise the
2 former site of Griffin Wheel, which operated two foundries, an
3 iron foundry and a brass foundry, from about 1897 to 1957 and
4 1980, respectively.

5 11. Railroad activities on the site included the
6 building, maintaining, repairing, cleaning, and dismantling of
7 railroad cars and locomotives. To supply the railroad with iron
8 wheels and journal bearings, the foundries commenced operations
9 concurrently with those of the rail yard. Other activities that
10 occurred included the depositing of slag and other debris on
11 site.

12 12. A number of investigations have been made of site
13 conditions by or for one or more of the Respondents. The results
14 of these investigations show that some soils at the site contain
15 elevated levels of lead, cadmium, copper, zinc, chromium,
16 polynuclear aromatic hydrocarbons (PAHs) and polychlorinated
17 biphenyls (PCBs). Heavy metals have also been detected in the
18 soils at the former Griffin Wheel foundry.

19 13. Investigations conducted by EPA in 1982 show that
20 in some locations groundwater at the site contains elevated
21 levels of inorganic elements which approach or exceed primary
22 drinking water standards. Surface waters also were found to
23 contain elevated levels of inorganic elements.

24 14. Polynuclear aromatic hydrocarbons in
25 concentrations exceeding 1 part per million (ppm) have also been
26 detected in site soils in a number of locations.
27

1 15. Hazardous substances detected at the site,
2 including those identified above, are toxicant that may adversely
3 affect the central nervous system, cardiac system, respiratory
4 system, and/or the renal function of humans. Lead is a hazardous
5 substance that can adversely affect the reproduction and central
6 nervous systems of mammals. PCBs are established animal
7 carcinogens. Certain PAHs, such as Benzo(a)pyrene, have also
8 been shown to induce cancer in laboratory animals.

9 16. The presence of these inorganic and organic
10 chemicals in soil, surface water, and groundwater may represent a
11 threat to human health and the environment. The aquifer
12 recharged in part by this area is a source of drinking water. In
13 addition to water supply, the surface and groundwater drainage
14 provides recharge for Flett Creek, a salmon spawning stream,
15 which lies approximately two miles to the south of the site.
16 Potential routes of exposure include direct ingestion of soil,
17 inhalation of airborne dust, and ingestion of groundwater.
18 Surface water contaminants may pose a risk to aquatic organisms.

19 17. Portions of the site are unsecured and frequented
20 by unauthorized individuals. Uncontrolled and unauthorized
21 dumping of various waste materials has occurred at portions of
22 the site.

23 18. In January 1987, an Administrative Order on
24 Consent was issued pursuant to section 106 of CERCLA to
25 Burlington Northern Railroad ("BNR") to conduct an investigation
26 of the site and to complete an RI/FS for the BNR properties.
27

1 Preliminary investigations have been performed pursuant to that
2 Order. An RI/FS has not been completed.

3 19. The site is a "facility" as defined in section
4 101(9) of CERCLA, 42 U.S.C. § 9601(9).

5 20. Wastes and constituents thereof at the site, sent
6 to the site, disposed of at the site, and/or transported to the
7 site are defined as "hazardous substances" in section 101(14) of
8 CERCLA, 42 U.S.C. § 9601(14).

9 21. The presence of hazardous substances at the site
10 and the past, present and/or potential migration of hazardous
11 substances from the site may constitute an actual and/or
12 threatened "release" as defined in section 101(22) of CERCLA, 42
13 U.S.C. § 9601(22).

14 22. Respondents are each a "person" as defined in
15 section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

16 23. The Respondents are responsible parties under
17 section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

18 19 IV. PARTIES BOUND

20 24. This Consent Order shall apply to and be binding
21 upon EPA and the Respondents, their agents, successors, and
22 assigns. Respondents are jointly and severally responsible for
23 carrying out all actions required of them by this Consent Order.
24 The signatories to this Consent Order certify that they are
25 authorized to execute and legally bind the parties they represent
26 to this Consent Order. No change in ownership of site properties
27

1 or corporate status of the Respondents shall alter Respondents'
2 responsibilities under this Consent Order.

3 25. The Respondents shall provide a copy of this
4 Consent Order to any subsequent owners or successors before
5 ownership rights are transferred. The Respondents shall provide
6 a copy of this Consent Order to all contractors, subcontractors,
7 laboratories, and consultants which are retained to conduct any
8 work performed under this Consent Order, within fourteen (14)
9 days after the effective date of this Consent Order or the date
10 of retaining their services. Notwithstanding the terms of any
11 contract, Respondents are responsible for compliance with this
12 Consent Order.

13
14 V. STATEMENT OF PURPOSE

15 26. In entering into this Consent Order, the mutual
16 objectives of EPA and the Respondents are: (a) to conduct a
17 remedial investigation, to determine the nature and extent of any
18 contamination by hazardous substances, pollutants or contaminants
19 at or from the site; and (b) to conduct a feasibility study, to
20 determine and evaluate alternatives for remedial action (if any)
21 to prevent, mitigate or otherwise respond to or remedy any
22 release or threatened release of hazardous substances,
23 pollutants, or contaminants at or from the site.

24 27. The activities conducted under this Consent Order
25 are subject to approval by EPA and are intended to provide
26 appropriate and necessary information for the remedial
27 investigation/feasibility study, and for a record of decision

1 that is consistent with CERCLA §§ 104, 121 and 122, and the
2 National Contingency Plan (NCP), 40 C.F.R. Part 300.

3
4 VI. NOTICE TO THE STATE

5 28. EPA is notifying the State of Washington that this
6 Consent Order is being issued by providing a copy to the State.

7
8 VII. WORK TO BE PERFORMED

9 29. All work performed under this Consent Order shall
10 be under the direction and supervision of qualified personnel.
11 Within fourteen (14) days of the effective date of this Consent
12 Order and before the work outlined below begins, the Respondents
13 shall notify EPA in writing of the names, titles, and
14 qualifications of the key personnel to be used in carrying out
15 such work, including but not limited to, project managers,
16 technical personnel, geologists, and hydrologists. The
17 qualifications of the persons undertaking the work for
18 Respondents shall be subject to EPA's review, for verification
19 that such persons have sufficient technical background and
20 experience. EPA shall complete its review within fourteen (14)
21 days of receipt of such names, titles and qualifications, and
22 shall notify Respondents in writing by that 14th day if it
23 disapproves of any person's technical qualifications. Work shall
24 commence in accordance with the work plan and its schedules on
25 the 21st day following EPA receipt of information on the
26 personnel to be used, unless EPA disapproves such personnel. If
27 EPA disapproves such personnel, Respondents shall thereafter

1 notify EPA within thirty (30) days of the written notice, of the
2 identity and the qualifications of the replacement(s), after an
3 opportunity to confer with EPA. Work shall then commence in
4 accordance with the work plan and its schedules on the 45th day
5 following EPA receipt of information on the replacement personnel
6 to be used, unless EPA disapproves such personnel. If EPA
7 disapproves of the replacement(s), after an opportunity for
8 dispute resolution as set forth herein, EPA reserves its right to
9 terminate this Consent Order and under CERCLA and the NCP to
10 conduct a complete RI/FS, and to seek reimbursement for costs
11 from the Respondents.

12 30. Pursuant to Sections 104 and 122(d)(3) of CERCLA,
13 and the requirements of the National Contingency Plan, 40 C.F.R.
14 Part 300, as revised ("NCP"), it is hereby ordered and agreed
15 that the Respondents shall prepare and implement a remedial
16 investigation/feasibility study (RI/FS). The RI/FS shall be
17 conducted in accordance with the Final Work Plan - Remedial
18 Investigation and Feasibility Study South Tacoma Field, Tacoma,
19 Washington, September 1990, Revision 1 and its appendices
20 (hereinafter "Work Plan") which is attached (Appendix 2) and
21 incorporated into this Consent Order. The requirements of the
22 Work Plan are fully enforceable under this Order, and include,
23 but are not limited to: an investigation that determines the
24 nature and extent of contamination at the site; and the
25 identification and evaluation of remedial alternatives which meet
26 state and federal standards and reduce risks to human health and
27

1 the environment; all of which tasks are identified in the
2 attached Work Plan.

3 31. Respondents shall conduct activities and submit
4 deliverables for the development of the RI/FS. All such work
5 shall be conducted in accordance with this Order, the Work Plan,
6 CERCLA, the NCP, and EPA guidance set forth in the "Interim Final
7 Guidance for Conducting Remedial Investigations and Feasibility
8 Studies under CERCLA" (OSWER Directive #9355.3-01), and guidances
9 referenced or specifically identified in the Work Plan. All work
10 performed under this Consent Order shall be in accordance with
11 the schedules developed pursuant to, or identified in, the Work
12 Plan, and proceed in full accordance with other deliverables
13 required by the Work Plan, as approved or modified by EPA. These
14 deliverables are incorporated into this Order and fully
15 enforceable under it.

16 32. Respondents shall complete the tasks identified in
17 the Work Plan. Among other things, the Work Plan includes:

- 18 a) Site Investigation and Characterization;
- 19 b) The preparation of a Remedial Investigation Report;
- 20 c) Development and Screening of Remedial Alternatives;
- 21 d) Detailed Analysis of Remedial Alternatives; and
- 22 e) Monthly Reports.

23 Each of the tasks includes sub-tasks which are identified in the
24 Work Plan. Associated with the performance of these tasks and
25 sub-tasks are deliverables which the Respondents shall produce
26 and submit to EPA in accordance with the schedules in the Work
27 Plan.

1 33. If EPA disapproves of a deliverable in whole or
2 part, which disapproval shall be in writing, Respondents shall
3 amend and submit a revised deliverable within twenty (20) days of
4 receiving EPA's notification of the disapproval.

5 34. As required by this Consent Order, Respondents
6 shall provide all data and information necessary for EPA to
7 evaluate actual and potential risks for human health and the
8 environment.

9 35. The Respondents shall conduct all investigatory
10 actions in such a manner as to minimize the release of hazardous
11 emissions from the site.

12 36. Unless otherwise provided by law and agreed to by
13 EPA, the Respondents shall insure that all waste generated at the
14 site in conducting the activities required by this Order is
15 properly characterized to identify its dangerous and hazardous
16 waste characteristics, if any, and disposed of in accordance with
17 the state of Washington Dangerous Waste requirements, RCRA Land
18 Disposal Restrictions, and other RCRA Subtitle C requirements, if
19 these are applicable based on waste source and characterization
20 results. Off-site disposal of hazardous substances shall comply
21 with the EPA Off-Site Disposal Policy dated May 6, 1985, 50 Fed.
22 Reg. 45933 (November 5, 1985) as amended in EPA's
23 November 13, 1987 "Revised Procedures for Planning and
24 Implementing Off-site Response Actions," Section 3004(d)(3) of
25 RCRA, 42 U.S.C. § 6924(d)(3), and section 121(d)(3) of CERCLA,
26 42 U.S.C. § 9621(d)(3), as amended.

1 37. The Respondents shall perform all work in a timely
2 manner and in accordance with timelines identified in the Work
3 Plan and the various deliverables. Requirements of this Order
4 shall not be deemed to have been satisfied until a final RI
5 Report and a final FS Report have been approved by EPA.

6 38. Documents which must be submitted under this
7 Consent Order, including reports, approvals, disapprovals, and
8 other correspondence and deliverables, shall be sent by certified
9 mail to the following addresses or to any other addresses which
10 the Respondents and EPA designates in writing:

11 (a) Documents to be submitted to EPA shall be sent to
12 (eight copies):

13 EPA Project Manager - South Tacoma Field Site
14 Superfund Branch
15 U.S. EPA, Region 10
16 1200 Sixth Avenue
17 Seattle, Washington 98101

18 (b) Documents to be submitted to the Respondents shall
19 be sent to:

20 Nathan Graves
21 Kennedy/Jenks/Chilton
22 530 South 336th Street
23 Federal Way, Washington 98003

24 39. If at any time during the RI/FS process,
25 Respondents identify a need for additional data, a memorandum
26 documenting the need for additional data shall be submitted to
27 the EPA Project Manager within twenty (20) days of
28 identification.

 40. Respondents or their representatives shall make
presentations at, and participate in, meetings at the request of
EPA during the initiation, conduct, and completion of the RI/FS,

1 following reasonable notice to Respondents of the date and time
2 of such meetings and the subjects requiring presentation. The
3 topics will include anticipated problems or new issues.

4 41. In the event that EPA conducts some of the tasks
5 but not the preparation of the RI/FS, or when directed by EPA to
6 do so, Respondents shall incorporate and integrate all
7 information and comments supplied by EPA into the final RI/FS
8 report, including the EPA baseline risk assessment reports. Such
9 incorporation and integration by Respondents shall not constitute
10 agreement to the factual, scientific, or legal accuracy of the
11 information and comments supplied by EPA -- Respondents merely
12 agree to incorporate said comments and information into a single
13 organized and integrated RI/FS containing all such information.

14 42. EPA reserves the right to comment on and modify
15 all deliverables. If EPA issues a notification of disapproval or
16 modification for a deliverable, EPA shall specify the
17 deficiencies in writing. If EPA amends, modifies or disapproves
18 any report, plan, or other submission under this section and the
19 Respondents disagree with the amendment or disapproval,
20 Respondents shall have the right to note its disagreement with
21 EPA in writing. Respondents may also invoke the dispute
22 resolution clause in Section XVII.

23 43. In the event that Respondents amend and revise a
24 report, plan or other deliverable upon receipt of EPA
25 disapproval, if there is subsequent EPA disapproval of the
26 revised report, plan or other deliverable, EPA may allow
27 Respondents an additional opportunity to submit a report, plan or

1 other deliverable acceptable to EPA. Alternatively, EPA may, in
2 lieu of Respondents, perform its own additional studies,
3 complete the RI/FS (or any portion of the RI/FS) under CERCLA and
4 the NCP, and obtain reimbursement from the Respondents for its
5 costs, or seek any other legally appropriate relief, provided
6 Respondents fail to comply with the results of dispute resolution
7 if those procedures are invoked.

8 44. Respondents shall not proceed with implementation
9 of RI/FS tasks without receipt of written EPA approval. Failure
10 of EPA to expressly approve or disapprove of Respondents'
11 submissions within the specified time periods, shall not be
12 construed as approval by EPA. In the event of EPA failure to
13 approve or disapprove submissions within the specified time
14 periods, EPA shall extend the schedules affected for a period
15 equal to the delay directly resulting from such circumstances.

17 VIII. QUALITY ASSURANCE

18 45. Respondents shall use quality assurance, quality
19 control, and chain of custody procedures described in the "EPA
20 NEIC Policies and Procedures Manual," May 1978, revised
21 November 1984, EPA-330/9-78-001-R and "Interim Guidelines and
22 Specifications for Preparing Quality Assurance Project Plans,"
23 December 1980, QAMS-005/80, while conducting all sample
24 collection and analysis activities required by this Consent
25 Order. In addition, all sampling and analysis activities shall
26 be undertaken in accordance with the requirements of the Work
27 Plan, and with sampling and analysis plans, as approved or

1 modified by EPA, after exhaustion of dispute resolution
2 procedures, if such modifications are the subject of objection by
3 Respondents. Respondents or their representatives shall consult
4 with EPA in planning for, and prior to all sampling and analysis
5 as detailed in the RI/FS work plan. To provide quality assurance
6 and maintain quality control, the Respondents shall:

7 (a) Use a laboratory approved by EPA which has and
8 follows a documented Quality Assurance Program
9 that complies with EPA guidance document QAMS-
10 005/80.

11 (b) arrange for EPA personnel and/or EPA authorized
12 representatives to have access to the laboratory
13 and its records, and to personnel utilized by the
14 Respondents for analyses.

15 (c) Ensure that the laboratory used by the Respondents
16 for analyses, performs according to a method or
17 methods deemed satisfactory to EPA and submits all
18 protocols to be used for analyses to EPA at least
19 10 days before beginning analysis.

20
21 IX. MODIFICATION OF THE WORK PLANS

22 46. In the event of unanticipated or changed
23 circumstances at the site, Respondents shall notify the EPA
24 Project Manager by telephone within 24 hours of discovery of the
25 new or changed circumstances. In the event that EPA or
26 Respondents determine that the new or changed circumstances
27 warrant changes in the work plans, or in addition to tasks

1 completed under the initially approved work plans, other
2 additional work is necessary and appropriate as part of the
3 RI/FS, EPA or Respondents may propose appropriate modification
4 (including extensions) to the work plan(s). If the parties
5 agree, the modifications shall be set forth in revised work
6 plans, to be annexed to the Work Plan, and thereafter considered
7 part of this Consent Order. If the parties cannot agree
8 concerning modifications to the work plans after informal
9 discussions, EPA may notify Respondents in writing of its
10 decision, which shall trigger Respondents' right to seek dispute
11 resolution pursuant to and consistent with the procedures set
12 forth in Section XVII below. Established schedules shall remain
13 in effect until such time as modifications are finalized, unless
14 otherwise agreed to by the parties. Additional work shall be
15 completed according to the standards, specifications, and
16 schedule set forth in the work plan(s) as modified pursuant to
17 this paragraph.

18
19 X. OTHER APPLICABLE LAWS

20 47. All actions required to be taken pursuant to this
21 Consent Order shall be performed in accordance with the
22 requirements of all applicable federal, state and local laws and
23 regulations. Respondents shall comply with OSHA and state labor
24 and industries requirements and shall perform all work safely.
25 Under section 121(e) of CERCLA, no local, state or federal permit
26 shall be required for any portion of the RI/FS conducted on-
27 site, if selected and carried out in compliance with that

1 provision of the statute. This order does not modify CERCLA
2 § 121(d)(3) or any regulations thereunder.

3
4 XI. FINAL RI/FS, PROPOSED PLAN, PUBLIC COMMENT
5 RECORD OF DECISION, ADMINISTRATIVE RECORD

6 48. EPA retains the responsibility for the preparation
7 and release to the public of the RI/FS report, proposed plan, and
8 Record of Decision in accordance with CERCLA and the NCP.
9 However, EPA agrees to notify the Respondents' designated Project
10 Manager in advance of the release of fact sheets, press releases,
11 and other public notices and documents prepared by EPA in
12 accordance with the community relations plan.

13 49. EPA shall notify the Respondents which preferred
14 alternative and final plan are selected for the site.

15 50. EPA will determine the contents of the
16 administrative record file for selection of the remedial action,
17 and will consider materials proposed by Respondents. Respondents
18 shall submit to EPA documents developed during the course of the
19 RI/FS, which documents may be part of the basis of selection of
20 the response action, and which documents are not otherwise
21 required to be submitted as part of the monthly progress reports
22 required under paragraph 55. Respondents shall additionally
23 submit any previous studies conducted under state, local, or
24 other federal authorities relating to selection of the response
25 action; all written communications between Respondents and state,
26 local or other federal authorities relating to selection of the
27 response action; and all information about site characteristics
28 or conditions relevant to selection of the response action.

1
2 XII. DESIGNATED PROJECT MANAGERS

3 51. On or before the effective date of this Consent
4 Order, EPA and the Respondents shall each designate a Project
5 Manager. The EPA Project Manager shall be the EPA Remedial
6 Project Manager. Each Project Manager shall be responsible for
7 overseeing the implementation of this Consent Order. To the
8 maximum extent possible, communications between the Respondents
9 and EPA shall be directed to the Project Manager by mail, with
10 copies to such other persons as EPA, the State of Washington and
11 Respondents may respectively designate. Communications include
12 all documents, reports, approvals, and other correspondence
13 submitted under this Consent Order.

14 52. EPA and the Respondents each have the right to
15 change their respective Project Manager. The other party must be
16 notified in writing at least ten (10) days prior to the change.

17 53. EPA may also designate an On Scene Coordinator for
18 the site, who shall have the authority specified in the National
19 Contingency Plan, 40 C.F.R. Part 300, as amended. Nothing in
20 this Order shall be construed to diminish that authority, nor
21 construed as a waiver of any rights the Respondents may have to
22 challenge or contest actions taken pursuant to that authority
23 which are not required by this Order. If the On Scene
24 Coordinator determines that conditions at the site may present a
25 threat to public health or welfare or the environment, EPA
26 retains the right, among other things, to direct, halt or conduct
27 work required by this Order, and/or take other response actions,

1 as set forth in the NCP. The absence of the EPA Project Manager
2 or On Scene Coordinator from the area under study pursuant to
3 this Consent Order shall not be cause for the stoppage or delay
4 of work.

5 54. On or before the effective date of this Consent
6 Order, EPA shall arrange for a qualified person to assist it in
7 overseeing and reviewing the conduct of the RI/FS, as required by
8 section 104(a) of CERCLA, 42 U.S.C. § 9604(a).

9
10 XIII. PROGRESS REPORTS

11 55. Respondents shall provide to EPA monthly progress
12 reports by the 10th day of the following month. At a minimum,
13 with respect to the proceeding month, these progress reports
14 shall: (1) describe the actions which have been taken to comply
15 with this Consent Order, (2) include all results of sampling and
16 tests (which results have been received by Respondents, and
17 verified and quality assured by Respondent's contractor within
18 the preceding month) and all other data received by the
19 Respondents related to the performance of the RI/FS; (3) describe
20 work planned for the next two months, with schedules included,
21 and (4) describe all problems and anticipated problems
22 encountered, and solutions developed and implemented.

23
24 XIV. ACCESS TO PROPERTY NOT OWNED BY RESPONDENTS

25 56. If the Respondents, Respondents' contractors and
26 agents, or EPA need access to any area not presently owned and
27 controlled by parties bound by this Consent Order, in order to

1 perform work required by this Consent Order, the Respondents
2 shall use their best efforts to obtain signed site access
3 agreements from the present owners of such areas no less than
4 ninety (90) days in advance of the date such work is scheduled to
5 commence, or such other time frame agreed to by EPA. Such
6 agreements shall provide reasonable access and passage for EPA,
7 its contractors and oversight officials, the State of Washington
8 and its contractors, and the Respondents and their authorized
9 representatives, and such agreements shall specify that
10 Respondents are not EPA's representative with respect to
11 liability associated with site activities. Copies of access
12 agreements shall be provided to EPA within five (5) days of their
13 execution.

14 57. In the event that the Respondents do not obtain
15 access agreements within the time period specified, Respondents
16 shall notify EPA in writing within five (5) days after the close
17 of such time period of the failure to obtain access agreements,
18 and include a description of the efforts made to obtain them.
19

20 XV. SAMPLING, ACCESS, AND DATA/DOCUMENT AVAILABILITY

21 58. All reports of results of sampling, tests,
22 modelling or other data, generated by Respondents, or on
23 Respondents' behalf, as part of the implementation of this
24 Consent Order, shall be submitted to EPA within ninety (90) days
25 of sampling or field testing or within such time as agreed to by
26 the parties. The raw data supporting such reports of sampling,
27 tests, modelling or similar reports shall be retained and made

1 available or submitted to EPA upon request. Similarly, EPA will
2 make available to the Respondents the results of sampling, tests,
3 or data similarly generated by EPA, unless exempted from
4 disclosure by law.

5 59. Respondents shall notify EPA at least fourteen
6 (14) days (or such other time frames agreed to by EPA) in advance
7 of conducting any excavations, drilling, well installation,
8 sampling or other field investigations, with the exception of
9 stormwater sampling. In the case of stormwater sampling,
10 Respondents shall notify EPA as soon in advance as is possible.
11 At EPA's verbal or written request, the Respondents shall allow
12 split or duplicate samples to be taken by EPA (and its authorized
13 representatives), using EPA provided sample containers, of any
14 samples collected by the Respondents in implementing this Consent
15 Order.

16 60. EPA and its authorized representatives shall have
17 the authority, at reasonable times, to enter and move about the
18 open areas of the property at the site belonging to the
19 Respondents, for the purposes of: inspecting conditions,
20 activities and the results of activities; reviewing the progress
21 of the Respondents in carrying out the terms of this Consent
22 Order; conducting tests as EPA or its authorized representatives
23 deem necessary; using a camera, sound recording, or other
24 documentary equipment; and verifying the data submitted to EPA by
25 the Respondents.

26 61. EPA and its authorized representatives shall have
27 the authority during regular business hours, and after notice, to

1 inspect outdoor areas which are secured, or indoor areas of the
2 property of the site belonging to the Respondents, for the
3 purpose of: inspecting conditions, activities, and the results of
4 activities, records, operating logs, and contracts related to
5 implementation of the RI/FS at the site; reviewing the progress
6 of the Respondents in carrying out the terms of this Consent
7 Order; conducting tests as EPA or its authorized representatives
8 deem necessary; using a camera, sound recording, or other
9 documentary equipment; and verifying the data submitted to EPA by
10 the Respondents.

11 62. Upon reasonable notice, the Respondents shall
12 allow EPA officials and officially designated representatives
13 (whose authority is manifested in writing) to inspect and copy
14 such records, files, photographs, documents, sampling and
15 monitoring data, and other writings related to the work
16 undertaken in carrying out this Consent Order, as Respondents may
17 be required to make available pursuant to 42 U.S.C. § 9604(e).
18 Nothing within this Consent Order shall be interpreted as
19 limiting EPA's inspection authority under federal law.

20 63. The Respondents may assert a claim of business
21 confidentiality covering part or all of the information required
22 by this Consent Order under 40 C.F.R. § 2.203(b). This assertion
23 shall be substantiated according to 40 C.F.R. Part 2, Subpart B,
24 when the assertion is made. Analytical data shall not be claimed
25 as confidential by the Respondents. Information determined to be
26 confidential by EPA, or so determined pursuant to legally
27 applicable review procedures, will be given the protection.

1 specified in 40 C.F.R. Part 2, Subpart B. If no such claim
2 accompanies the information when it is submitted to EPA, it may
3 be made available to the public by EPA without further notice to
4 the Respondents, unless Respondents submit such claim to the EPA
5 Project Manager prior to the time of the release.
6

7 XVI. RECORD PRESERVATION

8 64. EPA and the Respondents agree that all records and
9 documents in their possession that are generated pursuant to the
10 RI/FS and this Consent Order or are related to the generation,
11 treatment, or storage of materials at the site, or related to the
12 release or threatened release of hazardous substances,
13 pollutants, or contaminants at or from the site, shall be
14 preserved during the conduct of this Consent Order and for a
15 period of six years after commencement of construction of any
16 remedial action. The Respondents shall acquire and retain copies
17 of all such documents that are in the possession of Respondents'
18 employees, agents, accountants, contractors, or attorneys. After
19 this six year period, the Respondents shall notify EPA at least
20 ninety (90) days before the documents subject to this paragraph
21 are scheduled to be destroyed. If EPA requests that the
22 documents be saved, the Respondents shall, at no cost to EPA,
23 give EPA such documents as are not otherwise legally privileged
24 or copies of such documents. Such legally privileged documents
25 shall not be destroyed without approval of EPA or an order of a
26 court of competent jurisdiction.
27

1 65. Should the documents referred to in the preceding
2 paragraph contain any Confidential Business Information, each
3 Respondent producing any such documents may assert a claim of
4 business confidentiality covering part or all of the information
5 involved in the same manner as set forth in paragraph 63 above.
6 The fact that a Respondent may have determined that a document is
7 appropriate for destruction shall not constitute any waiver with
8 respect to confidentiality of business information or with
9 respect to any other privilege allowed by law.

10
11 XVII. DISPUTE RESOLUTION

12 66. Any disputes arising under this Consent Order
13 shall be resolved as follows. If the Respondents object to any
14 EPA notice of disapproval or decision made pursuant to this
15 Consent Order, including requests by Respondents (pursuant to
16 paragraph 46 of this Consent Order) for modification or
17 extensions of the work plans based on changed circumstances, the
18 Respondents shall notify EPA's Project Manager in writing of
19 their objections within fourteen (14) days after receipt of the
20 decision. Respondents' written objections shall define the
21 dispute, and state the basis of Respondents' objections, and be
22 sent certified mail, return receipt requested. EPA and the
23 Respondents shall then have an additional fourteen (14) days to
24 attempt in good faith to resolve the dispute. If agreement is
25 reached, the resolution shall be set forth in writing, signed by
26 the parties, and incorporated by reference into this Consent
27 Order. If agreement is not reached on any such dispute, the EPA

1 Region 10 Director of the Hazardous Waste Division ("EPA Division
2 Director"), after consideration of Respondents' written basis for
3 objection, and other information the EPA Division Director deems
4 relevant, shall provide a written statement of EPA's decision to
5 the Respondents which shall be EPA's final decision. Respondents
6 shall proceed in accordance with EPA's final decision regarding
7 the matter in dispute, regardless of whether Respondents agree
8 with the decision.

9 67. Before the close of the fourteen (14) day period
10 for resolution of disputes, Respondents may request that the EPA
11 Division Director meet with their designated representative(s)
12 before reaching a final decision on a dispute. The Respondents
13 may in writing designate one such request as a matter requiring a
14 meeting, in which case the EPA Division Director will provide
15 Respondents' representatives with an opportunity to meet with
16 him/her before reaching a decision. The decision on any other
17 request for a meeting with the EPA Division Director is committed
18 to the sole discretion of the EPA Division Director. The EPA
19 Division Director may at his/her discretion delegate to the EPA
20 Region 10 Hazardous Waste Division Deputy Director his/her
21 authority and duties under this Section.

22 68. Within seven (7) days after receipt of a written
23 statement of decision from the EPA Division Director pursuant to
24 this Consent Order section, Respondents shall advise EPA in
25 writing whether Respondents will implement EPA's decision or
26 directive as set forth in the written statement. If the
27 Respondents fail or refuse to carry out the directions or make

1 the amendments specified by EPA's written statement, EPA may
2 conduct the work of the RI/FS and thereafter seek reimbursement
3 from the Respondents, make the amendments itself, and/or take any
4 other actions it deems necessary.

5 69. Except as otherwise provided in Section XVIII
6 (Penalties), Respondents are not relieved of their obligations to
7 perform while a matter is pending in dispute resolution, unless
8 EPA agrees in writing to extend schedules.

9
10 XVIII. DELAY IN PERFORMANCE/STIPULATED PENALTIES

11 70. For each day that the Respondents fail to complete
12 a deliverable or meet a specified schedule by the specified
13 deliverable due date, Respondents shall be liable for stipulated
14 penalties, as set forth in paragraphs 73, 74 and 75 of this
15 Order. Penalties begin to accrue on the day that performance is
16 due, or a violation occurs, and extend through the period of
17 correction. In the event that Respondents are assessed and pay
18 stipulated penalties for a period of delay, subsequent delays in
19 submitting a deliverable or initiating work which are caused
20 solely, directly and unavoidably as a result of the period of
21 delay for which penalties were paid shall not be cause for
22 additional stipulated penalties. For violations that are not
23 based on timeliness, stipulated penalties shall not begin to
24 accrue until receipt by Respondents of written notice from EPA
25 that a violation has occurred. Payment shall be due within
26 thirty (30) days from the date of a demand letter by EPA.

1 71. If demand is made for payment, Respondents shall
2 forward a check to:

3 United States Environmental Protection Agency
4 Region 10
5 Superfund Accounting
6 P.O. Box 360903M
7 Pittsburgh, PA 15231

8 Checks should identify the name of the site, the site
9 identification number, the account number, and this Order. A
10 copy of the check and/or transmittal letter shall be forwarded to
11 the EPA Project Manager.

12 72. Respondents may dispute whether penalties are due
13 by invoking paragraph 66. Stipulated penalties shall not apply
14 to any act or omission which is the subject of ongoing dispute
15 resolution under Section XVII of this Order, unless EPA
16 determines that the dispute resolution procedures were invoked by
17 Respondents frivolously or in bad faith or for the purposes of
18 delay, in which case stipulated penalties would accrue for the
19 period of dispute resolution. If Respondents prevail, no
20 penalties shall be payable. If Respondents do not prevail, EPA
21 may collect all or in its sole unreviewable discretion, a portion
22 of the penalties that accrued.

23 73. For the following field activities and major
24 deliverables, including required revisions, stipulated penalties
25 shall accrue in the amount of \$500 per day, per violation, for
26 the first week of noncompliance; \$1,000 per day, per violation,
27 for the 8th through 14th day of noncompliance; and \$5,000 per
28 day, per violation, for the 15th day and beyond of noncompliance.

1 (a) The draft and final QAPP and all Field Sampling
2 Plans for the various media under investigation.

3 (b) The draft and final RI Report.

4 (c) The draft and final Feasibility Study Report.

5 74. For the following interim deliverables and any
6 required revisions, stipulated penalties shall accrue in the
7 amount of \$250 per day, per violation, for the first week of
8 noncompliance; \$500 per day, per violation, for the 8th through
9 14th day of noncompliance; and \$1,000 per day, per violation, for
10 the 15th day and beyond of noncompliance.

11 (a) Implementation of field investigations and
12 activities in accordance with approved plans and
13 schedules.

14 (b) Draft and Final Phase I Report: Soils.

15 (c) Groundwater Phase II Recommendations, and Phase I
16 Report.

17 (d) Recommendation on need for Treatability Studies,
18 and Draft and Final Treatability Study Work Plan,
19 if required by EPA.

20 (e) Technical Memorandum - Revised Remedial Action
21 Objectives and General Response Actions.

22 (f) Technical Memorandum - Refined Remedial
23 Alternatives and Action Specific ARARs, draft and
24 final.

25 (g) Technical Memorandum - Screening Evaluation
26 Results, draft and final.

1 75. For failure to submit monthly progress reports as
2 required, stipulated penalties shall accrue in the amount of \$100
3 per day, per violation, for the first week of noncompliance; \$200
4 per day, per violation, for the eighth through fourteenth day of
5 noncompliance; and \$500 per day, per violation, for the fifteenth
6 day and beyond of noncompliance.

7 76. The stipulated penalties provisions do not
8 preclude EPA from pursuing any other remedies or sanctions which
9 are available to EPA because of the Respondents' failure to
10 comply with this Consent Order.

11
12 XIX. FORCE MAJEURE

13 77. The Respondents shall notify EPA of any delay or
14 anticipated delay in achieving compliance with any requirement of
15 the Consent Order, caused by circumstances beyond the control of
16 the Respondents that cannot be overcome by due diligence. When
17 any event occurs or has occurred that may delay or prevent the
18 performance of any obligation under this Order, which Respondents
19 believe is due to force majeure, Respondents shall notify by
20 telephone the Project Manager, or, in his/her absence, the Chief
21 of the Superfund Site Management Section No. II, Region 10,
22 within three (3) days of the time Respondents knew or should have
23 known that such event might cause a delay.

24 78. Oral notification shall be followed by written
25 notification, made within ten (10) days of when Respondents knew
26 or should have known that such event might cause the delay or
27 anticipated delay. The written notification shall fully describe

1 the reasons for the delay; the reasons the delay is beyond the
2 control of Respondents; the anticipated duration of the delay;
3 actions taken or to be taken to prevent or minimize the delay; a
4 schedule for implementation of any measures to be taken to
5 mitigate the effect of the delay; and a statement as to whether,
6 in the opinion of the Respondents, such event may cause or
7 contribute to an endangerment to public health, welfare or the
8 environment. The Respondents shall adopt all reasonable measures
9 to avoid or minimize any such delay.

10 79. Any delay that Respondents demonstrate cannot and
11 could not have been overcome by due diligence on the part of
12 Respondents, and further demonstrate results from circumstances
13 beyond the control of Respondents shall be deemed an event of
14 force majeure, and such delay shall not be deemed to be a
15 violation of Respondents' obligation under this Consent Order,
16 and shall not make the Respondents liable for stipulated
17 penalties set forth in paragraphs 73, 74 and 75. To the extent a
18 delay is attributable to force majeure, the schedule affected by
19 the delay shall be extended for a period equal to the delay
20 directly resulting from such circumstances. Upon an adequate
21 showing that the schedule was delayed by force majeure, EPA will
22 modify the schedule accordingly. Force majeure shall include,
23 inter alia, delays in obtaining access to property not owned or
24 controlled by Respondents despite timely, best efforts to obtain
25 such access, delays in obtaining approval or permits by EPA or
26 other entities not attributable to Respondents, changes in work
27 plans and work stoppages directed by EPA not attributable to

1 Respondents, and other unanticipated impediments to completion of
2 the work, when Respondents can demonstrate such delays cannot and
3 could not have been overcome by due diligence on the part of the
4 Respondents. Normal inclement weather, increased costs of
5 performance of the terms of this Order, changed economic
6 circumstances, and failure of Respondents to make timely and
7 complete application for any required approval, shall not be
8 considered circumstances beyond the control of the Respondents.

9 80. Failure of the Respondents to comply with the
10 notice requirements of paragraphs 77 and 78 is a waiver of the
11 Respondents' right to invoke the benefits of paragraph 79.

12 81. If EPA and the Respondents cannot agree that any
13 delay in compliance with the requirements of this Consent Order
14 has been or will be caused by circumstances beyond the control of
15 the Respondents, or on the duration of any delay necessitated by
16 a force majeure event, the dispute shall be resolved according to
17 the dispute resolution provisions in Section XVII. The
18 Respondents shall have the burden of proving that the delay was
19 caused by circumstances beyond their control, the necessity of
20 the length of the delay, and that the Respondents took all
21 reasonable measures to avoid or minimize delay.

22
23 XX. REIMBURSEMENT OF COSTS

24 82. EPA will provide Respondents with an accounting of
25 contractor costs incurred by EPA in developing the Work Plan, not
26 to exceed \$150,000. The Respondents may invoke the dispute
27 resolution procedures set forth above in Section XVII with

1 respect to payment demands objected to. Within sixty (60) days
2 of receipt of EPA's accounting, or completion of dispute
3 resolution, the Respondents shall remit a check for the amount of
4 these costs, made payable to the Hazardous Substance Superfund.
5 Interest shall begin to accrue on the unpaid balance from the
6 date of demand by EPA for payment as set forth above.

7 83. Every year after the end of the federal fiscal
8 year, EPA shall submit to the Respondents an accounting of
9 response and oversight costs incurred by the U.S. Government with
10 respect to this Consent Order. Oversight costs shall include:
11 (a) all direct costs of EPA's oversight arrangement for the
12 RI/FS, including, but not limited to, time and travel costs of
13 EPA personnel, contractor costs, compliance monitoring including
14 the collection and analysis of split samples, inspection of RI/FS
15 activities, site visits, interpretation of Consent Order
16 provisions, discussions regarding disputes that may arise as a
17 result of this Consent Order, review and approval or disapproval
18 of reports, the costs of redoing any of Respondents tasks, if
19 such corrective action is determined necessary following
20 agreement with the Respondents or after exhaustion of dispute
21 resolution procedures; and (b) indirect costs as calculated in
22 accordance with the EPA Superfund Indirect Cost Manual for Cost
23 Recovery Purposes or superseding formal guidance or regulations.

24 84. EPA's certified Agency Financial Management System
25 summary data (SPUR Reports) and any associated documents, shall
26 serve as basis for payment demands, with additional documentation
27 of such demands in the possession of EPA supplied to Respondents

1 within thirty (30) days of written request by Respondents. EPA
2 retains the right to refuse to disclose any documents that would
3 be exempt from disclosure under 40 C.F.R. Part 2. The
4 Respondents may invoke the dispute resolution procedures set
5 forth above in Section XVII with respect to payment demands
6 objected to. The Respondents shall remit a check for the amount
7 of those costs, within sixty (60) days of receipt of EPA's
8 accounting or completion of any dispute resolution process, made
9 payable to the Hazardous Substance Superfund. Interest shall
10 begin to accrue on the unpaid balance from the date of demand by
11 EPA for payment as set forth in paragraphs 82 and 83.

12 84. Checks shall identify the name of the site, the
13 site identification number, the account number, this Order, and
14 be forwarded to:

15 United States Environmental Protection Agency
16 Region 10
17 Superfund Accounting
18 P.O. Box 360903M
Pittsburgh, PA 15251

19 86. Copies of the transmittal letter and check shall
20 be sent simultaneously to the EPA Project Manager.

21 XXI. RESERVATIONS OF RIGHTS AND REIMBURSEMENT OF OTHER COSTS

22 87. EPA reserves the right to bring an action against
23 the Respondents under section 107 of CERCLA for recovery of all
24 response costs incurred by the United States at the site not
25 reimbursed by the Respondents, any cost incurred in the event EPA
26 performs the RI/FS, or any part thereof, as well as any future
27

1 costs incurred by the United States in connection with response
2 activities conducted under CERCLA at this site. Respondents
3 reserve the right to defend against such actions, and this
4 document shall not constitute an admission of liability as to any
5 issue or evidence admissible in any proceeding to establish
6 responsibility under CERCLA, except to enforce the terms of this
7 Order.

8 88. Except as expressly provided in this Order, each
9 party reserves all rights and defenses it may have. The
10 undersigned Respondents are willing, as evidenced by the
11 signatures appearing below, to undertake and finance an RI/FS for
12 the site. The Respondents enter into such a commitment without
13 admitting or denying the underlying factual or legal correctness
14 of EPA's determination that there has been a release, or that
15 there is a threatened release, of hazardous substances,
16 pollutants, or contaminants at the South Tacoma Field site; this
17 Consent Order reserves all rights the parties may have relating
18 to ultimate responsibility for implementation of any remedies at
19 the site following completion of the RI/FS and does not
20 constitute any admission on behalf of any party, but rather
21 manifests the desire of the undersigned to undertake such
22 investigation as necessary to determine the extent of
23 contamination, if any, at the site, the possible causes thereof,
24 and the potential remedies for the same. The Respondents reserve
25 the right to seek contribution from each other as may be allowed
26 by law.

1 89. Nothing in this Order waives or modifies the
2 government's authority to take action under section 104 of
3 CERCLA, except as relates to procedures to undertake an RI/FS at
4 the site, as set forth herein. Nothing in this Order waives or
5 modifies the government's authority to take action under section
6 106 of CERCLA, or under other authority, in response to
7 conditions which may endanger public health or welfare, or the
8 environment. Nothing in this Consent Order shall prevent EPA
9 from seeking legal or equitable relief to enforce the terms of
10 this Order.

11 90. Following satisfaction of and while in compliance
12 with the requirements of this Consent Order, Respondents shall
13 have resolved its liability to EPA, and EPA agrees not to
14 initiate administrative or judicial enforcement for the
15 performance of the RI/FS for the site that is the subject of this
16 Order. The Respondents are not released from liability, if any,
17 for any actions that have or may be taken beyond the terms of
18 this Order regarding removals, other sites or operable units,
19 remedial design/remedial action (RD/RA) of this site, or
20 activities arising pursuant to section 121(c) of CERCLA.

21
22 XXII. DISCLAIMER

23 91. By signing this Consent Order and taking actions
24 under this Order, the Respondents do not indicate agreement with
25 EPA's Findings of Fact and Conclusions of Law. Furthermore, the
26 participation of the Respondents in this Order shall not be
27 considered an admission of liability for any purpose in any

1 proceeding, and is not admissible in evidence against the
2 Respondents in any judicial or administrative proceeding other
3 than a proceeding by the U.S., including EPA, to enforce this
4 Consent Order. Respondents retain their rights to assert claims
5 against other^a potentially responsible parties at the site.
6 However, the Respondents agree not to contest the validity of
7 this Order or any of its provisions in any action brought by EPA
8 to enforce its terms; but Respondents reserve all rights with
9 respect to issues concerning whether or not Respondents have
10 failed to comply with such terms.

11
12 XXIII. OTHER CLAIMS

13 92. In entering into this Order, the Respondents waive
14 any right to seek reimbursement under section 106(b) of CERCLA.
15 Respondents also waive any right to present a claim under CERCLA
16 §§ 111 or 112.

17 93. Nothing in this Order shall constitute or be
18 construed as a release from any claim, cause of action or demand
19 in law or equity against any person, firm, partnership,
20 subsidiary or corporation not a signatory to this Consent Order
21 for any liability it may have arising out of or relating in any
22 way to the generation, storage, treatment, handling,
23 transportation, release, or disposal of any hazardous substances,
24 pollutants, or contaminants found at, taken to, or taken from the
25 site.

26 94. This Order does not constitute any decision on
27 preauthorization of funds under section 111(a)(2) of CERCLA.

1 95. Respondents shall bear their own costs and
2 attorneys fees.
3

4 XXIV. INDEMNIFICATION

5 96. The Respondents agree to indemnify and hold the
6 United States Government, its agencies, departments, agents, and
7 employees, harmless from any and all claims or causes of action
8 arising from or on account of acts or omissions of Respondents,
9 Respondents' employees, agents, servants, receivers, successors,
10 assignees, or any persons, including but not limited to firms,
11 corporations, subsidiaries and contractors, in carrying out
12 activities under this Consent Order. The United States
13 Government or any agency or authorized representative thereof
14 shall not be held as a party to any contract entered into by
15 Respondents in carrying out activities under this Consent Order.
16 Respondents shall not, however, be required under this Consent
17 Order to indemnify or save and hold harmless the United states
18 (or EPA or any other agencies, officers, agents, or employees of
19 the United States) from any claims or causes of action to the
20 extent such claims or causes of action arise from or on account
21 of negligent acts or omissions of the United States (or its
22 agencies, officers, agents, or employees) in carrying out
23 activities pursuant to this Consent Order.

24 97. Except as expressly provided in Paragraphs 92 and
25 96, nothing herein shall be construed to effect or compromise
26 whatever rights Respondents may have pursuant to the Federal
27

1 Torts Claims Act or other authority which may authorize recovery
2 from the United States.

3 98. Nothing in this Consent order shall be construed
4 as precluding contractors selected by Respondents to conduct the
5 work provided for herein from applying to EPA for indemnification
6 pursuant to the relevant provisions of CERCLA.

7
8 XXV. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

9 99. The effective date of this Consent Order shall be
10 the date on which it is signed by EPA, following signature by all
11 Respondents.

12 100. This Consent Order may be amended by mutual
13 agreement of EPA and the Respondents. Amendments shall be in
14 writing and shall be effective when signed by EPA, following
15 signature by all Respondents.

16 101. Any deliverables, plans, technical memoranda,
17 reports (other than progress reports), specifications, schedules
18 and attachments required by this Consent Order are, upon approval
19 by EPA, incorporated into this Order. Any noncompliance with
20 such EPA approved reports, plans, specifications, schedules, and
21 attachments shall be considered a failure to achieve the
22 requirements of this Consent Order and may subject the
23 Respondents to the penalties provided for in Section XVIII.

24 102. No informal advice, guidance, suggestions, or
25 comments by EPA regarding reports, plans, specifications,
26 schedules, and any other writing submitted by the Respondents
27

1 will be construed as relieving the Respondents of its obligation
2 to obtain such formal approval as may be required by this Order.
3

4 XXVI. TERMINATION AND SATISFACTION

5 103. The Consent Order entered into by Burlington
6 Northern Railroad and EPA in January 1987, Docket No. 1086-08-
7 106, shall be deemed terminated as of the date of signing of this
8 Consent order by all parties herein, except with respect to
9 obligations imposed in Sections XI (Records Preservation), XIV
10 (Reservation of Rights), XV (Reimbursement of Costs), and XVIII
11 (Indemnification of the United States Government).

12 104. The provisions of this Consent Order shall be
13 satisfied when EPA gives the Respondents written notice that the
14 Respondents have demonstrated, to EPA's satisfaction, that all of
15 the terms of this Consent Order, have been completed. This
16 notice shall not, however, terminate Respondents' obligation to
17 comply with Sections XVI, XX, XXI, and XXIV of this Consent
18 Order.

19 XXVII. COMPUTATION OF TIME

20 105. Any time period scheduled to begin on the
21 occurrence of an act or event shall begin on the day after the
22 act or event. If the final day of any time period falls on a
23 Saturday, Sunday or legal holiday, the time period shall be
24 extended to the next working day. Legal holidays are those
25 identified in Rule 6(a) of the Federal Rules of Civil Procedure.
26
27

1 All time periods and schedules are in calendar days, unless
2 otherwise specified.

3 STIPULATED, AGREED, AND APPROVED FOR ISSUANCE

4

5

6 GLACIER PARK COMPANY

7 BY: Martha Anamosa

DATE: 10-5-90

8

Printed Name: Martha Anamosa

9

Title: Corporate Counsel

10

Address: 1011 Western Avenue, Suite 700
Seattle, WA 98104

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3 BURLINGTON NORTHERN RAILROAD

4 BY: 

DATE: Oct. 12, 1990

5 Printed Name: Ross A. MacFarlane

6 Title: Attorney

7 Address: 701 Fifth Avenue, Suite 5400
8 Seattle, WA 98104-7078
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2
3 CITY OF TACOMA

4 BY: *E E Coates*

DATE: October 11, 1990

5 Printed Name: E. E. Coates

6 Title: Director of Utilities

7 Address: Tacoma Public Utilities

P. O. Box 11007

Tacoma, WA 98411

1
2
3 PIONEER BUILDERS SUPPLY

4 BY: Arlene Davis

DATE: _____

5 Printed Name: Arlene Davis

6 Title: Secretary

Address:

7 5401 South Burlington Way
8 Tacoma, WA. 98409
9
10

11
12 1990.

IT IS SO ORDERED, this 15th day of October.

13 BY: Charles E. Findley

14 Director, Hazardous Waste Division
15 U.S. Environmental Protection Agency
16 Region 10
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